

**GARY D. JACOBS** )  
                     Claimant )  
 VS. )  
                     ) Docket No. 206,724  
**PICKENS, INC.** )  
                     Respondent )  
 AND )  
                     ) )  
**ITT HARTFORD** )  
                     Insurance Carrier )

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

(1) Whether claimant suffered an accidental injury resulting from an occupational disease, is a jurisdictional issue that subjects a preliminary hearing order to review by the Appeals Board. See K.S.A. 1996 Supp. 44-534a.

Claimant, a painter since 1980, was working for the respondent on August 16, 1995, in Russell, Kansas, painting the inside of a water treatment tank. Claimant was exposed to epoxy paint, paint thinner, and reducers while painting the tank. At the completion of claimant's shift on August 16, 1995, claimant proceeded to clean his tools with paint thinner and to clean his hands with GOOP hand cleaner provided by the respondent. Claimant testified that about 7:30 p.m., approximately one hour after he had finished cleaning his tools and his hands, he started breaking out into a rash and his throat started to swell. Claimant then had a fellow worker drive him to an emergency room at the Russell Hospital in an effort to obtain relief from those symptoms.

Claimant was seen by Scott J. Ketcher, D.O., for examination and treatment at the emergency room. At that time, claimant had developed blisters all over his body except on the palms of his hands. Claimant testified he was treated at the emergency room by being bathed in an astringent of rubbing alcohol. Claimant was taken off work with the diagnosis of contact dermatitis probably work related. However, Dr. Ketcher's medical note dated September 5, 1995, indicated other etiologies should be considered. Because claimant was not responding to treatment, Dr. Ketcher referred him to Donald K. Tillman, Jr., D.O., a dermatologist in Hays, Kansas.

Dr. Tillman saw claimant on September 6, and 13, 1995, prescribing cream for claimant's lesions. Dr. Tillman in a letter to Dr. Ketcher opined that claimant's urticaria reaction was associated with the possible combination of using GOOP hand cleaner and a reducing agent. When Dr. Tillman saw claimant on September 13, 1995, he noted that claimant had improved but was also developing new lesions. Dr. Tillman then questioned whether the GOOP hand cleaner and the reducers were the cause of claimant's urticaria reaction. The doctor then recommended that claimant be referred to Donald V. Belsito, M.D., Director, Division of Dermatology at the University of Kansas Medical Center, in Kansas City, Kansas. Dr. Tillman opined that Dr. Belsito could better determine whether claimant's condition was related to his work.

Medical treatment records from the KU Medical Center were admitted into evidence at the preliminary hearing. The medical records showed claimant was originally scheduled for the dermatology clinic on October 16, 1995. However, the first visit claimant made to the clinic was on February 2, 1996. At that time, a skin biopsy was taken from claimant's left hand for analysis. The biopsy report dated February 8, 1996, came back with a diagnosis of porphyria cutanea tarda, the most common form of porphyria, which is disturbance of porphyrin metabolism, characterized by cutaneous photosensitivity, that among other conditions, causes scarring bullae, hyperpigmentation, and facial hypertrichosis. See Dolan's Medical Dictionary, 28th Edition, pp. 1335-1336.

The results of claimant's testing and examination at the dermatology clinic are included in a letter to Dr. Tillman from David Nathan, M.D. and Donald N. Belsito, M.D. dated February 5, 1996. It was their impression that claimant's condition was contact dermatitis versus porphyria cutanea tarda. Claimant was to return to the clinic for further testing on February 19, 1996. However, the medical records indicate that claimant did not return until May 22, 1996. At that time, claimant was scheduled for a variety of laboratory tests to be completed by an outside laboratory. The medical records further indicated that claimant was scheduled to return for examination treatment to the dermatology clinic but had not returned at the time of the preliminary hearing held on October 11, 1996. Claimant testified he only missed two appointments at the Medical Center, one because of illness and the other was because of a snow storm.

At the conclusion of the preliminary hearing on October 11, 1996, the Administrative Law Judge appointed John E. Schlicher, M.D., a dermatologist located in Wichita, Kansas, as a neutral physician to perform an independent examination of claimant. Dr. Schlicher was requested, among other things, to form an opinion of whether claimant's complaints were causally related to his chemical exposure while employed by the respondent.

Dr. Schlicher saw the claimant on two separate occasions, November 5 and November 12, 1996. The doctor then summarized the results of his examination in a report dated December 9, 1996. Dr. Schlicher reported after his initial examination, that his clinical finding was porphyria cutanea tarda. The doctor ordered a 24-hour urine collection test for porphyrin studies. Those studies came back indicating elevated levels. Dr. Schlicher then opined that his impression remained porphyria cutanea tarda, a disorder of porphyrin metabolism which usually occurs as a result of liver damage. It was Dr. Schlicher's further opinion such condition may be caused by a reaction to medication or a chemical. However, in most cases, it is a result of excess ethanol ingestion.

Dr. Schlicher concluded, after examining claimant's previous medical records that the initial problem claimant had while working for the respondent could have been contact dermatitis. However, by the time claimant was treated at the KU Medical Center his basic problem was porphyria cutanea tarda. Dr. Schlicher indicated that he could not precisely be certain as to the etiology of claimant's problem. The doctor went on to recognize that solvents and carbon products have been implicated in liver damage. However, in Dr. Schlicher's nearly 25 years experience as a dermatologist he had not seen such damage from solvents or carbon products. He felt that virtually all of the time the problem was either medications or ethanol ingestion. The Appeals Board concludes from the preliminary hearing record of evidence taken as a whole, at this stage in the proceedings, the claimant has failed to prove that it is more probably true than not that his current medical condition is related to his exposure to chemicals while employed by the respondent. The Appeals Board finds the medical records contained in the preliminary hearing transcript prove that claimant probably had contact dermatitis from this initial exposure to chemicals at work. However, the medical treatment records which documented the testing and examination of claimant at the KU Medical Center, coupled

with the independent medical examination report of Dr. Schlicher is persuasive evidence to conclude that claimant's present problem is porphyria cutanea tarda which is more probably the result of excess ethanol ingestion and does not have a causal relationship to his employment.

The Appeals Board further finds that the respondent should be liable for all reasonable and necessary medical expenses for the diagnosis and treatment of claimant's skin inflammation through claimant's last visit on January 8, 1997, to John E. Schlicher, M.D., the dermatologist appointed by the Administrative Law Judge to perform an independent medical examination. Additionally, the Appeals Board finds the temporary total disability weekly benefits paid by the respondent to claimant from August 17, 1995 to October 4, 1995, remains the responsibility of the respondent.

(2) Because of the above finding, the second issue raised by the respondent is moot and need not be addressed by the Appeals Board.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated January 23, 1997, should be and is reversed and the claimant is denied the requested preliminary compensation benefits except for the benefits ordered paid above.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1997.

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BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS  
Vincent A. Burnett, Wichita, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director